Smitha and Others Vs. V. Krishnan

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Court : Kerala

Decided On : Oct-20-2011

Judge : R. Basant &Amp; the Honourable Mrs. Justice M.C. Hari Rani

Appeal No. : R.C.Rev.No.358 of 2010

Appellant : Smitha and Others

Respondent : V. Krishnan

Judgement :

R. BASANT.J

1. Two questions of moment which have substantial significance in the Rent Control law in the State are raised for consideration in this revenue petition. Challenge is raised against concepts that have occupied the field for a fairly long period of time. Ideal law is the perfect and just law. The quest and the endeavour to achieve that must continue. That concepts have occupied the field for a long period of time is not, by itself sufficient reason to refuse to have a re-look at the law when serious doubts exist about the validity of such entrenched concepts. The questions are:

i) In a claim for eviction under Section 11(3), 11(4), 11(7) and 11(8) of the Kerala Building (Lease and Rent Control) Act (the Act hereafter), is the landlord bound, after establishing such grounds for eviction, to show further that his claim for eviction is bona fide? Is not the Court under Section 11(10) at all bound to

consider the bona fides of such claim? Is there serious dichotomy between Aboobacker v. Sahithya P.S.Sangham Ltd. [2004(2) KLT 947] and the decisions of coequal Benches?

ii) Can a litigant claim a further and different relief which is specifically denied to him by subordinate authorities in an appeal or revision under the Act filed by his adversary challenging a part of the orders adverse to him when such litigant is, himself not choosing to challenge the rejection of his claim for such specific relief by preferring any appeal/revision or cross objections. Do precedents in Santha v. First Additional District Judge [1994(1) KLT 516] and Ganesh v. Varghese [2005(1) KLT 282] require re-consideration?

2. A brief reference to vital facts may be relevant. Tenancy is admitted. The landlord claimed eviction against the tenant under Section 11(2) (arrears of rent), 11(4) (i) (contumacious sub-lease) and 11(4)(ii) (destructive and objectionable use of the premises). The alleged sub-tenant, admittedly the brother-in-law of the tenant, was arrayed as the second respondent in the proceedings before the Rent Control Court. The Rent Control Court rejected the claim both under Section 11(4) (i) and 11(4) (ii). The claim under Section 11(2) was allowed. Both the landlord and the tenant went before the Rent Control appellate authorities with appeals. The tenant challenged the order of eviction under Section 11(2) whereas the landlord challenged the rejection of his claim under Section 11(4) (i). The appellate authority, by the impugned judgment, allowed the appeal of the tenant and set aside the order of eviction under Section 11(2). The appellate authority allowed the appeal filed by the landlord; reversed the finding of the Rent Control Court under Section 11(4)(i) and directed eviction under Section 11(4) (i). There was no challenge raised before the appellate authority against the rejection of the claim by the Rent Control Court under Section 11(4) (ii).

3. The landlord did not prefer any revision against the judgment of the Appellate Authority. The tenant and the alleged sub-tenant have preferred this revision petition. They advance a contention that the finding that there was contumacious and objectionable sub-lease/transfer of possession is legally and factually unsustainable and is liable to be vacated. It is further contended that the

subordinate authorities have failed to consider the question whether the claim under Section 11(4) (i) is bona fide as insisted by Section 11(10) of the Act. The landlord in turn, though he has not preferred any revision petition (or cross objection in the revision petition filed by the tenant) against the setting aside of the order of eviction under Section 11(2) wants this Court in this revision petition to consider his claim for eviction under Section 11(2) and restore the order of eviction under Section 11(2) passed by the Rent Control Court.

4. Issues: Three issues therefore arise for consideration in this revision petition. They are:

i) Whether the finding that there is objectionable sub-lease is legally and factually correct and whether the same deserves to be set aside invoking the revisional jurisdiction?

ii) Whether the claim under Section 11(4)(i) can pass the test of bona fides of the claim under Section 11(10)?

iii) Is this Court bound to consider the challenge raised against the rejection of the claim under Section 11(2) now in this Rent Control revision petition. Or, to put it in other words, can the order of eviction under Section 11(4)(i) be supported by the unchallenged and rejected ground under Section 1(2)?

5. As on issues (ii) and (iii), we think the matter deserves reference to a Full Bench, we are not proceeding to consider issue No.1 raised above in detail. We intend to make a reference of the entire case and not the two latter questions of law alone. It is, in these circumstances, that we do not delve deeper into issue No.1 raised above. We need only mention that if we were not satisfied with the said finding of the appellate authority, we would not have thought it necessary to make the reference at all.

6. That takes us to the two general questions of law raised in paragraph (1) which are relevant in issues (ii) and (iii) raised in this revision petition.

7. Question No.1): It will be apposite straight away to refer to the scheme of the Act. Section 11(1) speaks about eviction of tenants. A tenant cannot be evicted

except in accordance with the provisions of this Act and that is declared under Section 11(1). Thereafter the grounds for eviction are specified. We then take note of Section in its entirety.

8. We have sections 11(2), 11(3), 11(4), 11(7) and 11(8) which deal with circumstances under which a landlord may apply for eviction. We shall straight away note that Sections 11(5) and 11(6) together deal not with any order of eviction as such. An order of eviction stricto senso is not contemplated under Sections 11(5) and 11(6). Sections 11(5) and 11(6) only enable a landlord to apply for, and the Rent Control Court to grant, an order "directing the tenant to permit the landlord to enter and carry out the renovation of the tenanted premises". We therefore take the view that clauses (5) and (6) do not strictly deal with any order of eviction. Section 11(2) deals with eviction on the ground of arrears of rent. Section 11(3) deals with eviction on the ground of the bona fide need for the occupation of the landlord or any member of his family depending on him. Section 11(4) specifically deals with 5 eventualities in which the landlord is entitled to apply for eviction. Sub clauses (i) to (v) deal with five such instances where the landlord can apply for eviction. Section 11(7) deals with the option a landlord which is a religious, charitable, educational or public institution to apply to evict the tenant if the building is needed for the purpose of the institution. Section 11(8) deals with the right of the landlord occupying only part of a building to apply for eviction of the tenant occupying the whole or portion of the remaining part of the building, if he requires additional accommodation for his personal use. Thus, we find that Section 11 provides for 9 instances where the landlord can apply to the Rent Control Court to get a tenant evicted.

9. It will be apposite now to note that each ground of eviction is different and distinct in itself. The circumstances/requirements which entitle a landlord to claim eviction are different and are enumerated in detail under each of these 9 clauses. It will be pertinent straight away to note that the procedures to be adopted are also different. The mandatory pre-requisites are different. For example, in a claim under Sections 11(2) and 11(4)(i) prior notice is insisted in certain eventualities, whereas such notice is not insisted when the claim for eviction is staked under other clauses of Section 11. When eviction is claimed under Section 11(3), provisos

peculiar to 11(3) have to be satisfied. The provisos and conditions are peculiar to each of these sub sections and the landlord is bound to prove, when he stakes a claim under one of the sub-sections, the peculiar requirements of the relevant sub-section.

10. It will be apposite straight away to note that the consequences are also entirely different. When an order of eviction is passed under Section 11(2)(b), it is liable to be vacated when deposit is made as contemplated under Section 11(2)(c). The consequences following eviction under Section 11(3) are also different, in that, the tenant can claim to be put back in possession if the landlord does not occupy the building (See section 11(12)). Similarly all the five instances of eviction under Section 11(4)(i) to 11(4)(v) do also demand and require proof of peculiar facts. Procedures to be followed are also different. Consequence of the order of eviction under these sub-sections do also vary. So is the situation so far as clams under Sections 11(7) and 11(8) are concerned.

11. The legislature, after enumerating the various grounds for eviction (9 grounds) under Sections 11(2), 11(3), 11(4), 11(7) and 11(8) insists in sub Section 10 that when it comes to claims under sub-sections 3,4,7 and 8, that the claim must be bona fide. The Rent Control must be satisfied that the claim of the landlord under Sections 11(3), 11(4), 11(7) and 11(8) is bona fide. The learned counsel for the petitioner contends that Section 11(10) has a salutary object. It is not enough if the ground of eviction under the relevant sub-section is established. After establishing the peculiar grounds enumerated in the various sub-sections, the court must further be satisfied that the claim of the landlord is also bona fide. It is not sufficient if the ground under the relevant sub-section is technically established. The claim must also pass the test of bona fides. This is what the plain language of Section 11(10) insists, contends counsel for the tenant.

12. To us, it appears that the scheme of the Act is very clear. The relevant ground (9 grounds already referred to) will have to be established. In respect of 8 grounds (other than Section 11(2)) it will further have to be shown that the claim of the landlord is bona fide. It is true that under Section 11(3) and Section 11(4)(iv), there is already the stipulation that the need of the landlord under Section 11(3) and the

requirement of the landlord under Section 11(4)(iv) must be bona fide. Conscious of the fact that these stipulations regarding bona fides of the need and requirement are already there in Sections 11(3) and 11(4) (iv), the Legislature has proceeded to insist that the claim must also be bona fide if the claim is under sub-Sections 3,4,7 and 8 of Section 11. It is crucial that such insistence is not there if the claim is under Section 11(2). It is crucial in this context that Sections 11(4)(i), 11(4)(ii), 11(4)(iii), 11(4)(v), 11(7) and 11(8) which specify the grounds for eviction do not insist on bona fides on the part of the landlord as part of the ground for eviction. Even section 11(7) which speaks of the "need" of the institution does not insist in the sub-section that the need must be bonafide. Section 11(8) which speaks of the "requirement" of additional accommodation for personal use of the landlord significantly does not in that sub-section insist that the "requirement" ought to be bona fide. It appears that the legislative scheme evidently is to insist that in claims for eviction on all none grounds the particular ground specified in the relevant sub-section must be established. In addition, in the claims for eviction (other than that under Section 11(2)) the claim must further be shown to be bona fide. In respect of two claims the ground itself insists that the need (Section 11(3)) and the requirement (11(4)(iv)) must also be bona fide. That the ground does itself insist on bona fides in those two cases is no reason to assume, according to us, that the claims under all the eight grounds (including the other seven grounds) need not be shown to be bona fide as insisted by the plain language of Section 11(10).

13. A question has often been raised, when claims under Sections 11(3) and 11(4)(iv) are considered, as to what is the scope of the claim being bona fide when the need and the requirement under the respective sub-sections are already proved to be bona fide. It is, in this context that some of the courts have employed the expression that paramount bona fides of the claim under Section 11(10) will also have to be established after establishing the particular grounds for eviction under the various sub-sections.

14. Courts had occasion to consider this aspect earlier. In Haridas v. Mercantile Employees' Association [1975 KLT 437], a Division Bench of this Court in paragraph 8 observed thus:

“8. The next question urged before us on behalf of the revision petitioner is that the District Judge was in error in thinking that in an application made by a Public Institution under S.11(7) of the Act, the Rent Control Court is not called upon to consider whether the plea put forward by the landlord that the building is needed for the purposes of the institution is bona fide. The counsel relies on the provisions of sub-sections (10) of S.11 as clearly laying down that the Rent Control Court should reject an application made under sub-section(7) if it is not satisfied about the bona fides of the claim put forward by the landlord. We find that there is force in this contention. We shall extract sub-sections (7) and (10) of S.11 of the Act. They read:-

“(7). Where the landlord of a building is a religious, charitable, educational or other public institution, it may, if the building is needed for the purposes of the institution, apply to the Rent Control Court, for an order directing the tenant to put the institution, in possession of the building.”

11(10): The Rent Control Court shall, if it is satisfied that the claim of the landlord under sub-sections (3), (4), (7) or sub-section (8) is bona fide. Make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Rent Control Court, and if the Court is not so satisfied, it shall made an order rejecting the application:

Provided that, in the case of an application made under sub-section (8), the Rent Control Court shall reject the application if it is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage of the landlord:

Provided further that the Rent Control Court may give the tenant a reasonable time for putting the landlord in possession of the building and may extend such time so as not to exceed three months in the aggregate.”

On a combined reading of these sub-sections 7 and 10 there cannot be any doubt that the Rent Control Court is under a mandatory obligation to investigate into the bonafides of the claim put forward by the landlord under subsection (7) and to reject an application if it is not satisfied that the claim is bona fide. It is only when

the Rent Control Court is satisfied that the claim put forward by the landlord under sub-section (7) that the building in question is needed for the purposes of the Public Institution is bona fide that it can direct the tenant to put the landlord in possession of the building. The view taken by the learned District Judge that a consideration of the question as to whether there was bona fide need for the institution which the respondent has purported to represent to recover possession of the building for the purposes of the institution was extraneous to an enquiry under S.11(7) of the Act, is therefore manifestly incorrect. The decision of the learned District Judge allowing the landlord's prayer for eviction being based solely on the erroneous assumption that such an investigation need not be made in an application under S.11(7), it cannot be sustained.

(emphasis supplied)

15. Of course, the said Division Bench was considering a claim under Section 11(7) where the body of Section 11(7) does not refer to or insist on any bona fides specifically.

16. Later a learned Single Judge of this Court in Krishnan v. Vijayaraghavan [1977 KLT 1010] considered the same question. The learned Judge appears to have felt that the insistence of bona fides of the claim under Section 11(4)(i) is superfluous and unnecessary. The learned Jude discussed that question in detail in the said decision and finally observed that it is for the Legislature to intervene and make the necessary amendments. The learned Judge is paragraph 7 of that judgment did refer to the earlier decision in Haridas (Supra).

17. We need only note that even after elapse of more than 3 decades, the Legislature has advisedly not chosen to bring in the amendments proposed by the Court. This does convey to us eloquently that the legislative intent is to insist on the bona fides of the claim under Section 11(10) even when the claim is staked under Section 11(4)(i). In Azhikode Service Co-Op.bank Ltd. v. Narayanan[1994 (2) KLT 29] another Division Bench of this Court had occasion to consider the same question again. That Division Bench also had occasion to consider the necessity or requirement of satisfying the insistence on bona fides of the claim under Section 11(10) of the Act when the bona fides of the need is already

established as insisted by the ground under Section 11(3). The following observations in paragraph 4 of the said judgment are indeed relevant.

“Then the question that arises for examination is what is meant by the claim being bona fide as contemplated under sub-section(10) when the landlord establishes his bona fide need as required under sub-section(3) of S.11. When the bona fide need is established under sub-section (3), can it be said the claim for eviction is ipso facto bona fide? It cannot be said so in all the circumstances because even if the ‘bona fide need’ is established, the application for eviction need not be honest in all cases. But ordinarily when the bona fide need is established, it necessarily follows the claim for eviction also is bona fide unless it is a subterfuge. In this case of eviction under sub-section (7) the landlord shall establish that his claim is bona fide is required under sub-section (10).”

(emphasis supplied)

18. What we intend to observe is that the Division Bench had held categorically that even in a case under Section 11(3), the test of bona fides as insisted under Section 11(10) has to be satisfied. The passage extracted above does not in our mind leave any semblance of doubt on that question. Of course, when it comes to clams other than Sections 11(3) AND 11(4)(IV), the relevant sub-section does specifically insist on the ground being bona fide. Section 11(10) subsequently insists that all the claims must be bona fide to the satisfaction of the Rent Control Court if any order of eviction were to be passed even after the proof of the relevant ground under sub-section. The obvious intention it is evident is to exclude claims if such claims are subterfuge. The anxiety of the legislature to exclude such claims which amount to subterfuge is revealed convincingly by the insistence of ‘bona fides” of the claims in addition to proff of the particular ground. Section 11(10) to our mind reveals the deliberate intention of the legislature to exclude claims which lack paramount bona fides even if the ground for eviction is technically established.

19. Subsequently another Division Bench of this Court in Aboobacker (supra) had occasion again to consider the same question. The court in paragraph 8 proceeded to opine that the following six principles emerge from Section 11910).

We extract the same below:

“8. In view of the above mentioned discussion, the following principles emerge.

(1) An order of eviction is to be passed by the Rent Control Court under s.11(10) when a landlord establishes the bona fide need under sub-ss.(3), (4), (7) or sub-s.(8) of S.11. The Rent Control Court is not expected to further examine as to whether the claim is bona fide or not.

(2) Rent Control court while examining the question whether the need urged by the landlord is bona fide or not under sub-ss.(3), (4), (7) or sub-s.(8) is virtually examining the claim itself, that is the ground for eviction.

(3) Rent Control Court is legally obliged if it is satisfied that the claim of the landlord under sub-ss,(3),(4),(7) or sub-s.(8) is bona fide to make an order specifying a date for enabling the tenant to put the landlord in possession of the building.

(4) Rent Control Courtmay also give the tenant a reasonable time for putting the landlord in possession of the building and may extent such time so as not to exceed three months in the aggregate.

(5) Rent Control Courtis obliged to reject an application made under sub-s.(8) if it is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord.

(6) The Munsiff of the Principal Munsiff as the case may be, is expected to execute the order passed under S.11 (10) of the Act under S.14. Only after the expiry of the time fixed under S.11 (10). In other words, it is mandatory on the part of the Rent Control Court to fix a specified date for surrender by which time the tenant should put the landlord in possession.”

(emphasis supplied)

20. Of course, in this decision it appears that the division Bench has taken the view that when the relevant (eight) grounds under Sub-sections (3), (4), (7) and (8) are established, it is not necessary to further consider the bona fides of the claim

as indicated in Section 11(10) of the Act. We shall come back to this decision a little later.

21. A more recent decision of another Division Bench of this Court in Social Service Guild of Assissi Sisters v. Ouseph Chacko[2009(2)KLT 199] had occasion again to consider the play of Section 11(10). That was a claim under Section 1(7). The learned Judges of the Division Bench, after specifically adverting to Section 11(10), came to the conclusion that in a claim for eviction under Section 11(7), it is necessary that bona fides of the claim under Section 11(10) is also established. We think it apposite to extract the relevant observations in paragraph 8 below:

Unlike sub-s.(3), the word 'bona fide' is absent in sub-s.(7). But, that does not mean that for succeeding in a petition for eviction under sub-s. (7), it is not necessary to establish bona fides of the claim. Sub-s.(7), like sub-s,(8) is qualified by sub-s.(10) of S.11. It is therefore, clear that in order that a landlord succeeds in a petition for eviction invoking ground under sub-s.(7) or S.11, he satisfies the Rent Control Court that his claim is bona fide.

22. Though we requested the learned counsel to research no other decision having a direct bearing on the question has been cited before us. We have also not been able to trace any other precedent relevant on this aspect.

23. We come back to the decision in Aboobacker(supra). We have gone through the judgment in detail. The learned Judges obviously appear to have felt that Section 11(10) does not insist on anything more than what the concerned sub-sections (specifying the grounds) insist. The learned Judges referred to clauses (2) and (5) of Section 11. Those sub-sections deal with the order to be passed by the Rent Control Court, whereas clauses (3), (4),(7) and (8) only specify the ground on which an application for eviction can be filed by the landlord. A reading of Aboobacker (supra) reveals that the learned Judges construed the requirement of Sub-section 10 only as insisting that the ground under relevant sub-sections must be established. Inasmuch as the nature of the orders to be passed in a claim under Sections 112(3),(4),(7) and (8) is not specified in the concerned sub-section (unlike Section 11(2) and Section 11(5)), the learned Judges held that Section 11(10) when it spoke of the claim being bona fide was only insisting that the said

ground must be established. In short, the Division Bench in Aboobacker (supra) understood Section 11(10) as only insisting that the claim under sub-sections (3)(4),(7) and (8) must be established. Even though the language used in Section 11 (10) is that the Rent Control Court must be satisfied that the claim under the relevant sub-section “is bona fide”, the Division Bench held that it only insisted on proof of the relevant ground. We entertain very serious doubts on the correctness of the proposition. When the legislature had advisedly used the expression that the claim under the sub-sections must be “bona fide” under Section 11(10), to read and understand the expression “is bona fide” is intending to mean and convey only “is established” is, according to us, not justified by the semantics employed or the purpose to us, not justified by the semantics employed or the purpose of the Act. The satisfaction contemplated under Section 11(10) is not that the court must merely be satisfied that the claim under sub-sections (3),(4),(7) and (8) “is established” but that such claim, the court must be satisfied “is bona fide. To reckon the expression “is bona fide” [to mean or to read it down] as “is established”, is according to us not justified by the language of Section 11(10). It amounts to rewriting the section, it appears to us.

24. To our mind the scheme of the Act is evident. Unjustified eviction is intended to be prevented. At the same time the landlord with a bona fide claim for eviction on specified grounds is enabled to get an order of eviction expeditiously and without the wrangles or procedure. In such a case it is essential that the ground must not only be established/proved; the legislature has clearly intended that the claim must also be held to be bona fide. To our mind, the legislature, which in spite of the judicial recommendation in Krishnan (supra) has not chosen to amend or modify Section 11(10) has definitely intended that the ground must not only be proved; the claim on those proved grounds must be bona fide also. not to assign the full meaning of the work ‘bona fide’ in Section 11(10) and to read it down as “established” is impermissible and would stultify the purpose of the legislature which alertly used the expression bona fide in that sub-section.

25. Can there be an instance under Section 11(3) where the ground (the bona fide need) is established but the claim lacks bona fides? This query is often posed. One classic instance does occur to us. In a commercially vital site an old building

occupied by a single tenant exists. The landlord has bona fide for own occupation. He wants to demolish and reconstruct. He claims eviction both under Section 11(3) and 11(4)(iv) but claim under Section 11(3) only. He wants evidently to reconstruct; occupy a portion of the reconstructed premises and let out the rest of the building to fresh tenants. His need is bona fide. But his claim under Section 1193) [and his conduct of not pressing the claim under Section 11(4)(10)] evidently is not bona fide. He is pressing his claim under Section 11(3) alone to prevent re-induction of the ousted tenant under the proviso to Section 11(4)(iv). Here is an eminent instance of the need being bona fide under Section 11(3) but the claim for eviction under Section 11(3) being not bona fide. We point out this instance only to appreciate the significance of the insistence under Section 11(10) on the claim being bona fide, even after the ground of bona fide need is established.

26. Proposition (i) of Aboobacker (supra) extracted above generates serious disapproval in our mind. The learned Judges appear to have assumed that bona fide “need” is to be established under Section 1193), 11(4), 11(7) and 11(8). “Need” is part of the ground only under Section 11(3) and 11(8). The other sub section do not refer to any need-much less bona fide need. The observation that the landlord has to establish bona fide need under Section 11(3), 11(4), 11(7) and 11(8) in Aboobacker(supra) [see proposition 1] is evidently not correct. We assume that the learned Judges when they referred to “bona fide need” is proposition 1 were only intending to refer to “the relevant ground”. The further observation in proposition 1 that the Rent Control Court is not expected to further examine whether the claim is bona fide or not is clearly not acceptable to us. Section 11(10) would be rendered otiose if proportion (i) were to be so understood. The alert employment of the word “is bona fide” by the legislature in Section 11(10) would be rendered meaningless and superfluous, if the court were to read it down as merely “is established”.

27. We are certainly in these circumstances of the opinion that there is a conflict between the decision in Aboobacker (supra) on the one hand and the decision in all the three other decisions of the Division Benches referred above.(i.e. Haridas (supra), Nagarajan (supra) and Assissi Sisters(supra). We are certainly of the opinion that the matter deserves to be authentically resolved by an authoritative

pronouncement of the Full Bench.

28. According to us, the law on the point can be summarized as follows:

(i) in every claim for eviction under S.11, the relevant grounds (the nine grounds under Sections 11(2), 11(3), 11(4)(i) to (v), 11(7) and 11(8) will have to be established.

(ii) This includes of obligation under Sections 11(3) and 11 (4)(iv) to prove that the need (11(3))and requirement (11(4)(iv)) is bona fide.

(iii) In addition, when the claim is on the eight grounds under Sections 11(3), 11(4)(i) to (v), 11(7) and 11(8), the court must be satisfied further that the claim is also bona fide.

(iv) The legislature has advisedly used the word “is bona fide” in Section 11(10). The word ‘is bona fide’ cannot be read down to mean ‘is established’. Section 11(10) eloquently conveys the anxiety of the legislature to prevent dishonest invocation of a ground for eviction available under law. Normally and ordinarily, establishment of the ground would suggest and indicate that the claim is also bona fide. But subterfuge and dishonest clams for eviction should be prevented. Section 11(10) serves that eminent purpose and mandates that the landlord who is given the advantage of the easy and expeditious procedure for eviction under Section 11 must be prompted by honest (bona fide) intentions.

29. We do, in these circumstances, refer question No.1 raised in paragraph 1 along with the entire case for consideration for a Full Bench of this Court under Section 4 of the Kerala High Court Act.

Question No.2

30. We now come to question No.2. We have already adverted to the scheme of the Act. We must hasten to observe that in our perception there cannot be “an order of eviction simplicitor under the Act without reference to any sub-section. There can only be an order of eviction under Sections 11(2), (3), (4) (i) to (v), 11(7) or 11(8). Each order of eviction is separate and distinct. Different grounds have to

be established to successfully claim eviction under each of the sub-sections. As indicated earlier, procedures to be followed are also different. Pre-requisites and pre-conditions are different. The consequences are also different. Rights and liabilities flowing from an order of eviction under each of these grounds would be different and varied. We have already adverted to this aspect while discussing question No.1. We do not think it necessary to repeat the discussion now. What we intend to note is that there is no concept at all under the Act of “an order of eviction simplicitor” without reference to any particular sub-section of Section 11.

31. The fact that joinder of causes of action is permissible under law and that the landlord is in law entitled to stake claims for eviction under various sub sections in one petition to be filed by him does not and cannot at all militate against the separate and distinct identity of the claim for, and the order of eviction under various sub sections. Even if the authorities were to simultaneously pass an order of eviction under various sub sections, the landlord is bound to specify and the execution court is bound to ascertain from the landlord as to which specific order (i.e. under which sub section) is being executed. As the consequences, rights and liabilities flowing from an order of eviction under various sub sections of Section 11 are different, it is impossible in law to countenance or accept the concept of “an order of eviction simplicitor” without reference to any sub-section of Section 11. One cannot omit to note in law the cause of action for filing claims for eviction under each of the nine sub sections is different and distinct. The causes of action being distinct and separate, relief of eviction granted under each sub section must certainly maintain and retain its different identity all through.

32. If that be so, in an appeal or revision filed to challenge the grant or refusal of an order of eviction under the specified sub-section, is it open to the adversary to attempt to support the specific order of eviction under the given sub-section by falling back on the rejected claims which were raised unsuccessfully before the subordinate authorities and which remain unchallenged? This, according t us, the million dollar question to be considered.

33. Our attention has been brought to two specific precedents on this aspect. We have not come across any other binding precedents directly on this aspect. In both

those decisions, it appears that it is laid down that under Order 41 Rule 22 of the Code Civil Procedure as also under the general principles of law, when an “order of eviction’ is granted or rejected, such decision can be supported before the appellate court or the revisional court in an appeal or revision by the other side against another distinct part of the order, without the respondent filing any appeal against such grant/rejection and even without preferring any cross objections as contemplated by Order 41 Rule 22 CPC. We entertain serious doubts on the validity of such a general proposition.

34. We have considered the decision in Santha (supra). That was a case where an order of eviction was claimed under Section 11(3). The tenant disputed the alleged bona fide need of the landlord and also contended that he is entitled to the protection of the Second Proviso to Section 11(3). The Rent Control Court took the view that the bona fide need of the landlord is established. It was further found that the tenant was not entitled to the protection of the second proviso.

35. The tenant filed an appeal and the appellate authority confirmed the finding of the Rent Control Court that the need of the landlord was bona fide, but reversed the finding of the Rent Control Court on the availability of protection of the second proviso in favour of the tenant. The tenant was found entitled to the protection of the second proviso to Section 11(3). The appeal was allowed and the Rent Control petition was accordingly dismissed by the Appellate Authority.

36. The landlord challenged the order before the District Court in revision under Section 20 of the Act. The tenant, who had succeeded before the appellate court, did not prefer any revision. The landlord succeeded before the revisional court on the play of the second proviso. The District Court in revision held that the second proviso does not protect the tenant. The tenant then attempted to assail the finding on the question of bona fide need under Section 11(3). The revisional court accepted that contention. The revision petition was accordingly dismissed. The landlady then challenged the order before the High Court in exercise of the jurisdiction under Article 227 of the Constitution of India.

37. The learned Judges of the Division bench held that the tenant was entitled in the revision to challenge the finding on the question of bona fide need of the

landlord under Section 11(3) even when the tenant had not preferred any revision or cross objection. We find detailed discussion on the question. What has been held is that the tenant is entitled to support the order in his favour dismissing the claim for eviction under Section 11(3) by assailing other findings against him rendered by subordinate authorities even without any appeal/revision or cross objection. On facts as held in paragraph 15 of Santha (supra), the question does not pose any difficulty. We extract paragraph 15 of the said decision below:

“15. We are therefore of the view that the tenants in this case were entitled to question the correctness of the Appellate Authority’s finding regarding the bona fide need of the landlady, while contesting the revision petition filed by her, though they had not filed a separate revision petition of their own. We may also mention here incidentally that so far as this case is concerned, the claim of bona fide need under S.11(3) and the protection under the second proviso thereto are interwined and are but different facets arising for consideration out of the same ground of eviction, and therefore irrespective of the question whether O.41 Rule 22 or the principles thereof applied or not, the tenants were entitled to challenge the finding of the Appellate Authority regarding the bona fides of the landlady in defence to the landlady’s revision petition. That according to us constitutes the dictum in that decision as the other questions had not arisen for consideration at all. However, after holding so in paragraph 15, the Division Bench proceeded to consider and expressed the opinion that in a challenge by the tenant against an order of eviction suffered by him on any specific ground, the appellate authority and the revisional authority can permit the landlord to defend the “order of eviction” on any other ground available to the landlord under Section 11 of the Act. It is on this aspect of the matter that we have serious doubts. To us it appears that Santha (supra) takes the view that there is “an order of eviction simplicitor” without making reference to any particular sub-section of Section 11. To us it appears that the question whether in law there can exist any such “order of eviction’ without reference to any particular sub-section of Section 11 deserves fresh consideration. It is because of the doubt and disagreement on this aspect, we think it necessary to reefer the matter to the Full Bench.

38. Later, in Ganesh v. Varghese [2005(1)KLT 282], the Division Bench proceeded to consider the very same question. Reliance was placed on Santha(supra). That was a case where the order of eviction was passed under Section 11(4)(i). The sub-tenant challenged the same. The landlord did not challenge the rejection of the claim for eviction under Section 11(3). However, the Division bench held that when the tenant challenges an order of eviction under Section 11(4)(i), the landlord whose claim under Section 11(3) stands defeated (and who has not chosen to challenge that rejection of the claim under Section 11 (3) in any manner) can aspire to support the order of eviction passed under Section 11(4)(i) with the help of the ground under Section 11(3). We extract below paragraph 6 of Ganesh (supra).

“6. We may first examine whether the appellate authority is justified in raising an issue under S.11(3) in a case where landlord had failed to file an appeal on the adverse finding rendered by the Rent Control Court,. Rent Control Court has ordered eviction under S.11(4)(i) of the Act. So far as the landlord is concerned, he is already armed with an order of eviction and there is no purpose in further litigating the matter even if the Rent Control Court has rejected one of the grounds raised by him for evicting the tenant. Landlord will always be hopeful that the order which is in his favour would be upheld and in a given case if the tenant is not preferring an appeal under S.18 of the Act against the order of eviction, the question of filing appeal by the landlord does not arise since he is already armed with an order of eviction. It is not the law, once tenant has filed an appeal aggrieved by the order of eviction landlord shall also file an appeal or cross appeal challenging all the finding rendered against him even if the order of eviction is in his favour. In appeal if the Appellate authority is likely to disagree with the order of eviction it is always open to the landlord to attack the findings against him on the other grounds and try to sustain the order of eviction on the basis of evidence already on record. Landlord is not raising any new ground or adducing fresh evidence but only attacking the findings on the basis of available evidence on record. Though O.XLI R.22 of the Code of Civil Procedure is not specifically applicable to appeals under S.18 or to revision under S.20 of the Act, the principle contained therein would always apply for Courts to do complete justice between the parties. O.XLI R.22 entitles the party not only to support the finding appealed

against but also to state that the finding against him in the Court below in respect of any issue ought to have been in his favour. Such a contention is being raised on the basis of the pleadings already raised and also by the oral and documentary evidence already adduced. We are therefore in complete agreement with the principle laid down by the Division Bench of this Court in Santha v. Ist Addl. District Judge, 1994(1)KLT 516. We therefore hold even without filing an appeal under S.18 of the Act before the Appellate Authority, he can still challenge the findings adverse to him in the appeal and later in a revision preferred under S.20 of the Act."

39. A detailed discussion on the legal question does not appear in Ganesh (supra). Of course, it is stated that their Lordships are choosing to follow the earlier decision in Santha (supra). We are of the opinion that Ganesh (supra) does not take us any farther than what has been held in Santha (supra). The question deserves fresh consideration by a Full Bench according to us.

40. According to us, the obiter in Santha (supra) which is followed as dictum in Ganesh (supra) deserves reconsideration. This is because there is an underlying assumption in both that in law there can be an "order of eviction simplicitor" which can be supported on any ground available under Section 11 of the Act. That assumption according to us, we say with respect, is legally erroneous. No such order of eviction simplicitor can in law exist. There can be an order of eviction on any one of the nine grounds (i.e. 11(2), 11(3), 11(4)(i) to (v), 11(7) or 11(8)). Each such order is separate and distinct. The grounds to be proved are different. The pre requisites and preconditions are different. The consequences flowing from each order of eviction is different. The rights and obligations post eviction are also different. In these circumstances, we opine respectfully, that the assumption that there exists "an order of eviction simplicitor" which can be supported on any grounds under Section 11 is legally impermissible. In law there can be only an order of eviction under Section 11(2), 11(3), 11(4)(i) to (v), 11(7), 11(8) and there cannot be an unspecified "order of eviction" without reference to any sub-section. In Santha (supra) and Ganesh (supra) such an incorrect assumption in law was made and that we say with respect, led to incorrect conclusions. That joinder of causes of action is permissible and eviction can be claimed by the landlord under

different sub-sections of Section 11 in one petition filed by him does not and cannot militate against the separate and distinct nature and identity of the claim (and order) for eviction under the respective sub-sections.

41. We must refer to what we perceive to be injustice flowing from such an opportunity to challenge rejected claims merely because the other side has chosen to challenge another distinct part of the order that has been passed. In many cases, the order of eviction is passed only under Section 11(2) of the Act and the claims under other sub-sections of S.11 are rejected. The tenant is conscious of the worst consequences which may visit him, if that order of eviction were permitted to stand. He can avoid the order of eviction under Section 11(2)(c) by deposit of amounts. He chooses to prefer an appeal or revision. In such appeal/revision, the landlord is enabled under the dicta referred above to raise totally different grounds which have already been considered and rejected and which the landlord has not chosen to challenge at all either by filing appeal/revision or even by filing a cross objection in such proceedings. Such a tenant at the fag end of the proceedings in appeal or revision is forced to defend clams for eviction under other sub sections of Section 11, which have been rejected already and which rejection has become final without challenge in accordance with law. This certainly results in injustice certainly, according to us. In our perception, the confusion of thought as to whether there can exist an “order of eviction simplicitor” without reference to any particular sub-section of Section 11 deserves to be clarified and disabused.

42. It will be apposite in this context to refer to the provisions of Order 41 Rules 22 and 33. Rule 33 does of course deal only with exceptional powers of the appellate court when it modifies or alters a decree, i.e. decree/order which is already passed. Order 41 Rule 33 only provides for exceptional powers to ensure the ends of justice. That is not in any way intended to alter or militate against the finality of the unchallenged orders/decrees passed.

43. Coming to Order 41 Rule 22 what is permitted to be challenged in an appeal preferred by the other side without a cross appeal or cross objection is only findings which can enable the respondent to support the order passed, which is

under challenge. The powers of Order 41 Rule 22 cannot, according to us, certainly extend to interference with unchallenged orders/decrees which are distinct and separate and which have become final. Finality of unchallenged orders will have to be scrupulously preserved and protected.

44. We, in this context, visit again the circumstance that the cause of action for lodging the claim for eviction under different sub sections is different, distinct and separate. By invoking the principles under Order 41 Rule 22 the relief which is claimable under one cause of action cannot be granted when such claim is rejected and remains unchallenged by any process known to law, merely because dispute ins raised regarding the claims granted on a totally different cause of action. That under both causes of action the ultimate relief claimed is eviction cannot alter the situation.

45. By way of example we may point out that in a suit for money by the wife against the husband relief can be claimed on two causes of action, one for amount due by way of maintenance and the other for return of amounts borrowed. If the former clam is allowed and the latter rejected, in an appeal by the wife against the rejection of the latter claim, the husband cannot obviously be permitted under Order 41 Rule 22 or analogous principle to challenge the decree for payment of maintenance. Order 41 Rule 22 can enable the respondent in an appeal/revision to support the impugned order by assailing other findings, without filing a separate appeal or cross objection. That provision (or principle thereunder) cannot enable the respondent to claim a different and distinct relief than what has already been granted in his favour, without challenging that part of the order by preferring a cross appeal/revision or cross objection. To hold contra would upset and negate the principle of finality of an unchallenged order.

46. According to us, therefore, even by resort to the principles under Order 41 Rule 22, or Order 41 Rule 33 which do not specifically apply to proceedings before the Rent Control Authorities, it is not possible to enable or permit the challenge against a rejected unchallenged order of eviction merely because the other side has chosen to prefer an appeal/revision against a specific and distinct part of the order adverse to him. We feel that such opportunity given to a defeated litigant

who does not choose to prefer an appeal/revision or a cross objection would work out injustice unintended by the statute.

47. That precisely is what the respondent-landlord in this case is attempting to do. His claim for eviction under Section 11 (2) stands rejected by the decision of the appellate authority. He has not chosen to prefer any revision. He has not chosen to prefer any cross objection in the revision filed by the tenant also. Till the matter came up for arguments, there is no indication whatsoever that the respondent/landlord intends to raise a challenge against the rejection of the claim under Section 11(2) of the Act. In the course of arguments as a bolt from the blue, the tenant is compelled to face this challenge against the rejection of the claim for eviction under Section 11(2) by the appellate authority. We feel that it would be unjust to permit the respondents like the landlord herein to raise such contention either on the strength of Order 41 Rule 22 (or 33) C.P.C. or under the general principles of law relating to orderly procedure relating to appeals and revisions.

48. We may summarize our conclusions thus:

i) The claim (and the order of eviction) under each sub-section (nine in all) is specific, separate or distinct. Each calls for establishment different facts and circumstances. Pre-requisites and preconditions are different. The consequences are different. Rights and obligations flowing from an order of eviction under each sub-section is different. Hence in law there exists no such entity as “an order of eviction simplicitor” under Section 11. There can only be an order of eviction under the specific sub-section of Section 11.

ii) Though causes of action can be consolidated and a common application can be filed claiming eviction under different sub-sections of Section 11, that does not militate against or obliterate the separate identity and distinct nature of the claim of consequent order.

iii) In the absence of a cross appeal/revision or cross objections, neither under Order 41 Rule 22 or under the general principles of law can the respondent in an appeal or revision be permitted to attempt to support the order of eviction under a specified sub-section of Section 11 by urging grounds which may be available to

claim an order of eviction under a different sub-section.

iv) Of course, when an order of eviction (or rejection of the claim for eviction) under a specified sub-section is assailed, the respondent without any cross appeal/revision or cross objection can support the impugned order by assailing other findings relevant to the claim under that sub section.

v) To that extent the obiter in Santha (supra) which is followed as dictum in Ganesh (supra) deserves reconsideration.

49. We are, in these circumstances, satisfied that question No.2 also deserves to be considered by a Full Bench for an authentic decision on the question.

50. We repeat that we feel that this old matter deserves to be disposed of expeditiously. As all the three issues raised are integrally connected, the entire matter (and not only the questions of law) deserves to be referred to the Full Bench under Section 4 of the Kerala High Court Act.

51. We direct the Registry to place the matter before the Hon’ble the Acting Chief Justice for necessary directions.